

REMARKS

Applicants respectfully request reconsideration of the present application in view of the forgoing amendments and the reasons that follow.

I. Claim Status

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 4, 6, 8, 10-11 and 19 are currently being amended without prejudice or disclaimer. Support for the amendments can be found throughout the Specification, for example on Page 5, Lines 1-15, Page 11, Lines 3-9, and Experiments 1 and 2 of the Specification. No new matter is added.

Claims 26-27 are being added. Support for the new claims can be found on Page 7, Lines 31-36 of the Specification. No new matter is added.

After amending the claims as set forth above, claims 4, 6, 8-11 and 19-27 are now pending for examination. Claims 1, 3, 5-7 and 12-18 are cancelled without prejudice or disclaimer.

II. Claim Rejections under 35 U. S. C. § 112

The Office Action maintained rejections to claims 4, 6, 8-13 and 15-25 under 35 U.S.C. § 112, first paragraph on two grounds: (A) “it would not be clear to one of ordinary skill in the art what ingredients are being used in Applicants’ instantly claimed invention;” (B) “since the art does not support a correlation, particularly in vivo in humans, between the in vitro experiment and what is being claimed, Applicants are not enabled for what Applicants are claiming.”

Applicants do not concede any of the above arguments are proper. Solely in the interest of expediting prosecution, the independent claims 1 and 19 are amended to recite “a

method of inducing apoptosis of and TSP-1 activity in a vascular endothelial cell in need thereof.” As shown in Experiments 1-2 of the Specification and explained in the response filed on March 16, 2010, the claimed crude drugs may induce TSP-1 activity in and apoptosis of vascular endothelial cells.

Moreover, the term “active ingredient” is deleted from the claims without prejudice or disclaimer for clarification. The claims now recites a composition comprising at least one of da zao (*Zizyphus jujuba* Miller var. *inermis* Rehder) extract, roman chamomile (*Anthemis nobilis* Linne) extract coicis semen (*Coix lacryma-jobi* Linne var. *ma-yuen* Stapf) extract, and silk (*Bombyx mori* Linnaeus) extract, or chlorella (*Chlorella vulgaris* Chick) extract. As explained on Page 10, Lines 35-36 of the Specification, the extracts may be obtained from commercially resources (e.g., from Ichimaru Pharcos Co. Ltd.). The extracts may be also be obtained by any conventional extraction methods (Specification, Page 7, Lines 24-25). A list of widely used methods have also been provided in the Specification as non-limiting examples (Specification, Page 7, Line 24 - Page 8, Line 10). With the above information provided in the Specification, Applicants respectfully submit that enough detail has been provided to enable an ordinary skill in the art to carry out the invention without undue experimentation.

For the above reasons, Applicants respectfully request withdrawal of the section 101 rejections.

III. Claim Rejections under 35 U. S. C. §§ 102&103

Claims 4 and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Uehara et al. (JP 2000-119156, hereinafter “Uehara”). Claims 4, 11, 12 and 18 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Garlen et al. (US 4,707,354, hereinafter “Garlen”). Claims 4, 6, 8-13 and 15-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sei et al. (JP 2002-128651, hereinafter “Sei”), in view of Andre-Jean et al. (JP 07-145067, hereinafter “Andre-Jean”).

Independent claims 4 and 19 recite “a method of inducing apoptosis of and TSP-1 activity in a vascular endothelial cell of a subject in need thereof.” The preamble, “in need

thereof”, is not merely a statement of effect that may or may not be desired or appreciated, but rather is a statement of the intentional purpose for which the method must be performed.

Jansen v. Rexall Sundown, Inc., 342 F.3d 1329, 1333-34, 68 USPQ2d 1154, 1158 (Fed. Cir. 2003). As held by the Federal Circuit, such a claim may not be anticipated unless the prior art teaches administration for the same purpose.

As explained above, “a method of inducing apoptosis of and TSP-1 activity in a vascular endothelial cell in need thereof” recited in independent claims 4 and 19 are fully enabled, and thus should be considered in evaluating the patentability of the claims.

None of these references teaches that any of the disclosed formulations or crude drugs are capable of inducing apoptosis of and TSP-1 activity in a vascular endothelial cell of a subject in need thereof. Accordingly, Applicants believe that the methods recited in claims 4 and 19 are not anticipated by, or obvious over, the cited references.

Claims 6 and 8-11 depend from claim 4, and thus are patentable for at least the same reasons as claim 4. Claims 20-25 depend from claim 19, and thus are patentable for at least the same reasons as claim 19. Newly added claims 26-27 depend from claims 4 and 19 respectively, and thus are patentable for at least the same reasons as the respective base claim thereof.

For at least the above reasons, Applicants respectfully request withdrawal of the section 102 and 103 rejections.

IV. Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment,

to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By /Stephen B. Maebius/

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5569
Facsimile: (202) 672-5399

Stephen B. Maebius
Attorney for Applicants
Registration No. 35,264